



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MARSHALL GERSTEIN & BORUN
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

COPY MAILED

MAR 29 2006

OFFICE OF PETITIONS

In re Application of	:
Francine Goulet et al	:
Application No. 10/678,167	: DECISION ON PETITION
Filed: October 6, 2003	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 238813US-6 DIV	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 28, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional Application No. 60/252,588, filed November 24, 2000, as set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The instant application cannot claim the benefit of provisional Application No. 60/252,588 because the instant application was filed on October 6, 2003, which is well over twelve (12) months of filing of the provisional application. However, it would be proper for intermediate Application No. 09/990,320, filed November 23, 2001, to claim benefit of U.S. Provisional Application No. 60/252,588. See MPEP §§ 201.11 and 201.06(d).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment¹ to correct the above matter, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

Further correspondence with respect to this matter should be addressed as follows:


By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

37 CFR 1.78(a)(3) and 1.78(a)(6) require a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.78(a)(6), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.78(a)(6).

Any questions concerning this matter may be directed to Wan Laymon at (571) 272-3220.


Frances Hicks
Lead Petitions Examiner
Office of Petitions

¹ Note 37 CFR 1.121